



The Comptroller General
of the United States

Washington, D.C. 20548

Decision

Matter of: The W. H. Smith Hardware Co.

File: B-228127

Date: December 7, 1987

DIGEST

Agency had a compelling reason to cancel a solicitation after bid opening where the solicitation overstated the agency's needs by a factor of four due to an error in the packaging specifications.

DECISION

The W. H. Smith Hardware Co. protests the General Services Administration's (GSA) cancellation of items 27-30 under solicitation No. 7PRT-52953/L6/75B, which was issued for an indefinite quantity requirements contract for casters. The protester alleges that the agency lacked a compelling reason for cancellation. We deny the protest.

The solicitation requested bids for several different types of casters. Each type of caster was identified by a National Stock Number (NSN) followed by an Item Purchase Description (IPD). Following the IPD for each caster, GSA listed the item number, delivery point, an estimated peak monthly requirement, an estimated 2-year quantity, and the unit of issue, and provided space for a unit price.

Smith was the low bidder for items 27-30, for which the total estimated peak monthly requirement and 2-year quantities were, respectively, 5,832 and 20,160. While conducting the preaward survey, however, the contracting officer discovered that the solicitation listed the unit as a package of four casters, instead of a package of one. The incorrect listing of the unit of issue resulted in two problems. First, the solicitation overstated GSA's estimated needs by a factor of four because the quantities stated in the solicitation were intended to represent individual casters, whereas a bidder naturally would have assumed that they corresponded to the stated unit; the bidder thus would have viewed the total estimated peak monthly requirement of 5,832 for the four items as representing that many packages, or units, of four casters,

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i.e., 23,328 casters, and the total estimated 2-year quantity of 20,160 as representing 80,640 casters. Second, GSA needed individually packaged casters, but the bids presumably were for packages of four. In view of these problems, GSA decided to cancel items 27-30.

The protester notes that with its price for a package of four casters it also gave a price for an individual caster, so that GSA could tell how much Smith would charge in either circumstance. Smith also points out that in the standard clause in the solicitation, "Scope of Requirements Contract (No Guaranteed Minimum Quantity)," GSA does not guarantee that any minimum quantity will be ordered; Smith argues that bidders therefore would not be prejudiced if the estimates were overstated. Finally, Smith contends that the schedule for items 20-26 also overstated the government's needs by a factor of four by incorrectly stating the unit of issue, but GSA awarded a contract for those items anyway.

Because of the potential adverse impact on the competitive system of canceling a solicitation after prices have been exposed, a contracting officer must have a compelling reason for such action. Federal Acquisition Regulation (FAR), 48 C.F.R. § 14.404-1(a) (1986). Contracting officials have broad discretion to decide whether or not compelling circumstances for cancellation exist, and our Office's review is limited to considering the reasonableness of the exercise of that discretion. Professional Carpet Service, B-212442, et al., Oct. 24, 1983, 83-2 C.P.D. ¶ 483. It is incumbent upon the protester to establish that the contracting officer abused this discretion. Id. Smith has not done so here.


Where estimates in a solicitation are found to be other than a reasonably accurate representation of actual anticipated requirements, cancellation is required to preclude the possibility of an award that will not result in the lowest cost to the government and to provide bidders an opportunity to restructure their bids on a more realistic representation of anticipated needs. Downtown Copy Center, 62 Comp. Gen. 65 (1982), 82-2 C.P.D. ¶ 503; Edward B. Friel, Inc., 55 Comp. Gen. 231 (1975), 75-2 C.P.D. ¶ 164.

The requirements clause Smith cites basically alerts bidders to the fact that, since the contemplated contract is a requirements one, if it happens that the government has no bona fide need for the items it will not order any (but will order any it does need under this contract). The clause, however, also advises that the solicitation's estimates are based on the best information available, and thus contemplates that bids will be prepared against that measure. The fact that the clause does not guarantee a

purchase does not permit the government to forego its responsibility to conduct a fair procurement and instead hold the competition and award a contract that is based, in the first instance, on a significant overstatement of its needs, see Renaissance Exchange, Inc., B-220799.2, Jan. 21, 1986, 86-1 C.P.D. ¶ 63; the clause is not intended as a substitute for a reasonably accurate statement of requirements followed by an intelligent competition on that basis.

Finally, the protester's allegation that the same unit of issue misstatement occurred for items numbered 20-26 simply is incorrect, as the record shows that the unit of issue for these items is a package of four.

The protest is denied.

for 
James F. Hinchman
General Counsel